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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI – 110 019

S 761858

Amazon Technologies Inc. v. Mr. Zhou Xiangsheng

AWARD

1. The Parties

The Complainant is Amazon Technologies Inc. PO Box 8102, Reno, Nevada 89507, U.S.A. .

The Respondent is Mr. Zhou Xiangsheng, HuoJo Road # 108, 4 – 101, DongHu District, Wuhan, Hubie, 430074, China.

2. The Domain Name and Registrar

The disputed domain name is <www.Amazon.in>. The said domain name is registered with Dynadot LLC (R117 – AFIN)

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3. Procedural History

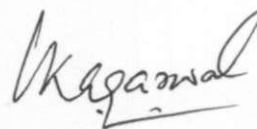
- (a) A Complaint dated March 12, 2012 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on March 31, 2012. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules, on April 9, 2012 the Sole Arbitrator notified the Respondent of the Complaint through the e mail address dnshour@gmail.com. The Respondent was required to submit his defence within 20 days from the date of receipt of the e mail, that is, by April 29, 2012. The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte. No reply has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexures to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant Amazon Technologies Inc. U.S.A. selected the name "AMAZON" in 1994. The choice of this name was made because the Amazon river in South America is the biggest river in the world and one of the goal of the Complainant was to offer the largest selection of book titles in the world. Thus, the main activity of the Complainant is to prepare catalogues of various books for study and procurement of the same by its customers. In the initial years the Complainant developed largest catalogue



of books with a total of 1.1 million titles and got customers in 65 countries outside the United States. By March 1997 the number of titles (books, CDs, videotapes, audiotapes, and other products) offered by the Complainant had risen to 2.5 million.

The Complainant for the first time obtained the registration of the internet domain name "amazon.com" in November 1994.

Subsequently, the Complainant expanded its operations to include more products, such as, tools, home electronics, watches and jewelry, health and personal care, toys, apparel and accessories, movie and entertainment database, shoes, baby products, etc.

The Complainant also assured its customers that they can buy with confidence from third party sellers on its sites.

After the 2004 earthquake and Tsunami in the Indian Ocean, the Complainant set up an on line donation channel to the American Red Cross and by January 2005 received donations of over \$15.7 million from 200,000 individuals in the US alone.

In June 1994 the Complainant had also set up an Amazon Software Development Center in Bangalore in India.

Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant has to demonstrate in the Complainant that each of the three elements specified in the Policy are applicable to this dispute. The Complainant contends that each of the aforesaid three elements are applicable to this dispute.

In relation to element (i), it appears from the Complainant that “amazon” is a part of the name of the Complainant. The disputed domain name is “amazon.in”. Thus, the disputed domain name contains a part of name of the Complainant. The addition of the words “co” or “in” or change of one word, that is, “a” from amazon to “o” in “amazon” is insignificant.

The Complainant contends that it has several domain names containing its

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trademark "AMAZON" such as, <amazon.com> (in the USA); <amazon.ca> (in Canada); <amazon.cn> (in China); <amazon.fr> (in France); <amazon.co.uk> (in the United Kingdom); <amazon.co.jp> (in Japan); <amazon.de> (in Germany); <amazon.it> (in Italy); <amazon.es> (in Spain), etc.

The Complainant has stated that, in addition to the above domain names, it has registered several top level Indian domain names. Some illustrations of such domain names are as follows: <amazonindia.in>; <amazonfabrics.in>; <amazonservices.in>; <amazonwireless.in>; <amazonelectronics.in>; <amazoninternational.in>; <amazonbooks.in>; <amazonindia.co.in>; <amazonfabrics.co.in>; <amazonservices.co.in>; <amazonwireless.co.in>; <amazonelectronics.co.in>; <amazoninternational.co.in>; <amazonbooks.co.in>; etc.

In relation to element (ii), the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "AMAZON" or for that matter as "AMAZON".. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. It appears that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and particularly the customers of the Complainant. No website is hosted on <www.amozon.in>.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <amazon.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.AMOZON.IN> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

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A. Identical or Confusingly Similar

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

As per the whois information, the domain name <amazon.in> was initially registered on January 13, 2011 by one Mr. Jing Ren for a period of one year. On August 11, 2011 the Complainant, through their attorneys, sent an email at the email id <dnseeker@yahoo.cn> calling upon the registrant to transfer the domain name to the Complainant. However, on 24th August 2011 the disputed domain name got transferred to the present Respondent. On September 28, 2011 and again on October 12, 2011 the Complainant's attorney again asked the new Respondent to transfer the disputed domain name to the Complainant. However, no reply had been received.

The word "AMAZON" is registered as trademark mark of the Complainant in 125 countries. Some such countries are Algeria, Argentina, Australia, Austria, Bahamas, Bahrain, Benelux, Brazil, Bulgaria, Canada, Chile, China, Cyprus, Denmark, Egypt, Ethiopia, European Union, Finland, France, Germany, Ghana, Greece, Hong Kong, Indonesia, Israel, Italy, Japan, Kenya, Kuwait, Malaysia, Mexico, Morocco, Netherlands, New Zealand, North Korea, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Romania, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Zambia, etc. the said registrations are in various classes. Therefore, the Complainant is well known to its customers as well as in business circles as "AMAZON" all around the world.

The words "amazon" and "amazon.com" are also registered in India as trademarks in various classes from 1999 onwards. The said registrations have been assigned from Amazon.com, Inc. to the Complainant and their transfer to Amazon Technologies Inc., as the subsequent proprietor of the said trademarks is pending with the Registry.

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The present dispute pertains to the domain name <amazon.in>. The Complainant possesses a large number of other domain names, as mentioned above, with the word "AMAZON". The Complainant is also the owner of trademark "AMAZON" and "AMAZON.COM. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is very much similar or identical to these domain names and the trademarks of the Complainant. The following cases support the Complainant:

It has been held in the case of *Disney Enterprises Inc. v. John Zuccarini Cupcake City and Cupcake Petrol*, (WIPO Case No. D2001-0489) that "Domain names that incorporate well-known trademarks can be readily confused with those marks." Similarly, in the case of *Osram GmbH v. Yuri A Ivanov* (WIPO Case No D2009-0692) it has been held that, "incorporating a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark".

Therefore, I hold that the domain name <amazon.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to

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misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name <Amozon.in>. AMAZON is the name and mark of the Complainant. The trade mark "AMAZON" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Zhou Xiangsheng. It is evident that the Respondent can have no legitimate interest in the domain name.

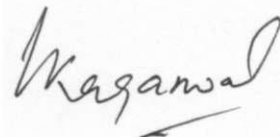
The Complainant contends that the expression AMOZON does not have any relationship or association with the Respondent. Further that, the Complainant has not licensed, authorized or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. It has been held in the case of *Chanel Inc. v. Torres*, (WIPO Case No. D2000-1833) that the "Respondent had no rights in "Chanel" trademark when complainant had never "given the respondent permission to use its domain name" and had never "had any relation at all with the respondent".

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or



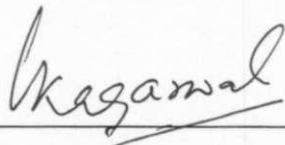
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The Respondent's registration of the domain name <www.Amazon.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.Amazon.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator
Date: May 10, 2012